IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

Crl.MC.No. 608 of 2007()

CRRP.27/2005 of ADDL. SESSIONS COURT, VADAKARA
CC.176/2002 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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PETITIONER: APPELLANT/COMPLAINANT

P.K.AHAMMED, S/O.KUNHABDULLA,
PADINHARAKOILOTH HOUSE, PUDUPPANAM AMSOM DESOM,
VADAKARA, REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER UMMERKUTTY, SON OF ABOOBACKER,
"RAHMANIYA", P.O. PUTHUPPANAMA,
VADAKARA, KOZHIKODE.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: RESPONDENTS/STATE & ACCUSED

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLI PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. P.P.SADIQUE, S/O. KUNHABDULLA,
PUTHENPEEDIYIL HOUSE, CHERUMOTH P.O., VALAYAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 608 OF 2007

Dated this the 9th day of March, 2007

ORDER

The petitioner is the complainant in a prosecution under Sec.138 of the Negotiable Instruments Act. The learned Magistrate found the accused guilty, convicted and sentenced him. The accused preferred an appeal before the learned Sessions Judge. The petitioner also, dissatisfied with the sentence imposed, preferred a revision petition. The learned Sessions Judge took up both the matters for consideration together. The learned Sessions Judge came to the conclusion that the conviction is not proper and that the accused is entitled for an acquittal. Accordingly, the accused was found not guilty and acquitted and the judgment of the trial court was set aside. Consequently, since the conviction was set aside, the revision petition also stood dismissed. The petitioner has come to this Court with this Crl.M.C. with a prayer that powers under Sec.482 of the Cr.P.C. may be invoked to interfere with the order dismissing the revision

petition. According to me, this Crl.M.C. is not maintainable. The challenge in the revision was against the quantum of sentence imposed. The sentence has itself been set aside. The accused has been found to be not guilty and acquitted. The petitioner's only option now is to challenge the acquittal. In such challenge against acquittal, he can certainly clamour for imposition of appropriate sentence by the court considering the appeal against acquittal. I am of opinion that a separate petition under Sec.482 of the Cr.P.C., against the dismissal of a revision petition which, in turn, was against the inadequacy of sentence imposed which sentence does not itself now exist, is not maintainable.

2. In the result, this Crl.M.C. is dismissed. Needless to say that if the petitioner is advised to file an appeal, in such appeal it will be open to him to canvass his plea regarding inadequacy of sentence originally imposed also.

Sd/-
(R. BASANT, JUDGE)

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//true copy// P.S. To Judge